

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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QUANTUM CORPORATE FUNDING, LTD.,

Plaintiff,

Civil Action

Docket No. 08 CV00539(LAK)(HBP)

-against-

**STATEMENT PURSUANT
TO LOCAL RULE 56.1**

WESTWOOD DESIGN/BUILD
INCORPORATED, DAVID B. WARFIELD,
NATIONAL CITY MORTGAGE INC., and
PENN LYON HOMES CORPORATION,

Defendants.

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NATIONAL CITY MORTGAGE,

Third-Party Plaintiff,

-against-

MICHAEL CONRAD, a/k/a MICHAEL CONRAD
BROWN,

Third-Party Defendant.

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Plaintiff, Quantum Corporate Funding, Ltd (“Quantum”), contends that there is no genuine issue to be tried as to the following material facts:

1. Plaintiff Quantum is a corporation organized and existing under the laws of the State of New York, maintaining its principal place of business at 1140 Avenue of the Americas, New York, New York 10036 and is engaged in the business of commercial finance. Affidavit of Craig Sheinker, sworn to July 3, 2008 (hereafter “Sheinker Affidavit”), para. 3 and Exhibit J, para. 1.

2. Defendant Westwood Design/Build Incorporated (“Westwood”) is a corporation organized and existing under the laws of the State of Maryland maintaining its principal place of business at 12109 Gordon Avenue, Beltsville, Maryland 20705. Sheinker Affid. Exs. A and J, para. 2.

3. Defendant National City Mortgage Inc. ("National") is a corporation organized and existing under the laws of the State of Ohio, maintaining its principal place of business at 3232 Newmark Drive, Miamisburg, Ohio 45342. Sheikner Affid. Ex. J, para. 4.

4. Defendant Penn Lyon Homes Corporation ("Penn") is a corporation organized and existing under the laws of the State of Pennsylvania, maintaining its principal place of business at 195 Airport Road, Selinsgrove, Pennsylvania 17870. Sheikner Affid. Ex. J, para. 5 and Ex. K, para. 5.

5. In or about January, 2007 Mr. and Mrs. Eustace Pollydore, as owners, entered into contracts with defendant Westwood, as contractor, and with defendant National, as construction lender, pursuant to which Westwood contracted to construct a new home at 6117 Elm Street, Lanham, Maryland for the Pollydore (the "Pollydore Residence"). Sheikner Affid. para. 4 and Exhibits A and B.

6. By virtue of the work and materials allegedly furnished by Westwood for the Pollydore Residence there became due to Westwood from National pursuant to the second draw-down on the Pollydore construction loan the sum of \$347,000.00 for which an invoice was rendered by Westwood to National (the "Invoice"). Sheikner Affid. para. 5 and Exhibits B and C.

7. In or about December, 2007, in order to induce Quantum to purchase the Invoice and in payment thereof to wire \$130,731.72 to Westwood and \$112,168.28 to Penn, Westwood forged an invoice allegedly from Penn in the amount of \$112,168.28, allegedly in payment for the construction of the modular Pollydore Residence. Sheikner Affid. paras. 11 and 17 and Ex. G and Ex. K, paras. 37-44.

8. Westwood made an assignment to Quantum of the moneys due it from National on account of the Invoice (the "Assignment"). Sheinker Affid. para. 10 and Exhibit E.

9. Pursuant to Westwood's Assignment on December 21, 2007, Quantum wired from its account at Sterling National Bank to Penn's account No. 40224230 at Omega Bank, \$112,168.28 in payment for the "Pollydore Residence." Sheinker Affid. para. 11 and Exs. E, F, G, H and K para. 41.

10. Penn's Account No. 40224230 received the \$112,168.28 wire transfer from Quantum on or about December 24, 2007. Sheinker Affid. Exs. H and K para. 41.

11. Penn had no contract with Westwood to supply the Pollydore Residence. Sheinker Affid. para. 17 and Ex. K, para. 39.

12. Penn did not credit the \$112,168.28 received from Quantum against the Pollydore Residence. Sheinker Affid. Ex. K, para. 43.

13. Notwithstanding Penn's receipt of the \$112,168.28 from Quantum in payment for the Pollydore Residence, Penn never shipped the Pollydore Residence. Sheinker Affid. paras. 17 and 19 and Ex. K, paras. 39, 43 and 44.

14. Notwithstanding Penn's receipt of the \$112,168.28 from Quantum in payment for the Pollydore Residence, Penn credited the \$112,168.28 against monies owed it by Westwood for the "Harris Residence". Sheinker Affid. paras. 11, 16 and 17 and Ex. K, paras. 42-44.

15. On January 15, 2008, Quantum demanded that Penn return the \$112,168.28 it had received in payment for the Pollydore Residence. Sheinker Affid. para. 18 and Ex. I.

16. Penn refused and continues to refuse to uncredit the \$112,168.28 received from Quantum which it credited to the Harris Residence and to return the \$112,168.28 to

Quantum. Sheinker Affid. para. 20 and Ex. J.

Dated: New York, New York
July 3, 2008

GOETZ RITZPATRICK LLP

By: 

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